IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1163 OF 2005

IN

NOTICE OF MOTION (DRAFT) OF 2005

IN

L.C.SUIT NO.5602 OF 2005

ALONG WITH

CIVIL APPLICATION NO.1140 OF 2005

Shubh Apartments Cooperative
Housing Society Ltd. ...Appellants

Versus

Municipal Corporation of
Greater Mumbai & Anr. ...Respondents

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Mr.V.A.Thorat, Sr.Counsel with Mr.N.Vaishnava
i/b Vaishnava & Co. for Appellants.
Mr.Malandkar for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 23, 2006.

P.C.

1. Limited controversy that arises for consideration in the present Appeal and which incidentally happens to be the issue raised in the Suit is that although the Plaintiffs had filed reply dated 2nd December 2005 accompanied by relevant documents in support of their case, the Chief Engineer (Building Proposal City) by order dated 8th December 2005, observed that the Appellants did not produce any documentary evidence showing authorisation of the work mentioned in the notice or any approval granted by the Office for the same. According to the Respondents/Defendant, no such representation was filed by the Plaintiffs before the Chief Engineer (Building Proposal City) who was expected to consider the representation made pursuant to the notice dated 19th November 2005. Counsel for the Plaintiffs, however, submits that the representation was filed in the same office and acknowledgement was also available. During the course of arguments, Counsel for the Respondents, on instructions, states that the entire controversy can be cut short, if the Plaintiffs were to submit reply to the show cause notice dated 19th November 2005 directly to the

Legal Department of the Respondent Corporation who, in turn, will place the same before the appropriate authority for consideration in accordance with law. Counsel for the Appellants/Plaintiff undertakes to furnish complete set of representation dated 2nd December 2005 to the Advocate appearing for the Corporation by tomorrow.

2. In the circumstances, this Appeal is disposed of on the understanding that the appropriate authority will decide the representation in accordance with law as expeditiously as possible and deal with the materials which will be produced by the Appellants along with the said representation. For the nature of order that is passed in this Appeal, it is fairly accepted by the Counsel appearing for the parties that nothing will survive in the Suit filed by the Appellants and the same can be disposed of with liberty to the Appellants/Plaitniff to take recourse to such remedy, as may be permissible by law, in the event, the order passed by the competent authority on the representation made by them is adverse to the Appellant Society. Appeal

is disposed of leaving all questions upon. In case, there is failure on the part of the Appellants to hand over complete set of representation dated 2nd December 2005 to the Advocate for the Corporation by tomorrow, the order of status-quo granted under this order will be deemed to stand vacated without further reference to the Court. In the event, compilation of representation is made over by tomorrow, the status-quo order granted on the earlier occasion to continue for a period of four weeks or till the disposal of the representation and two weeks thereafter whichever is later.

3. In view of the above order, Civil Application also stands disposed of.

A.M.KHANWILKAR, J.